SUPREME COURT OF THE UNITED STATES.

No. 753.

ALBERT B. PULLMAN, PLAINTIFF IN ERROR,

vs.

CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY OF THE GREAT WESTERN INSURANCE COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Bond for costs in circuit court	3	1
Transcript from district court	5	1
Precipe for summons	5	2
Bond for costs	6	2
Declaration	6	3
Plea	16	9
Stipulation as to evidence	17	9
Stipulation to waive jury, &c	17	10
Judgment	18	10
Bill of exceptions	18	11
Prospectus	19	11
Auditor's certified copy of proceedings increasing stock	21	13
Oath of directors	22	13
Charter	25	15
Amended charter	27	17
Copy of report of December, 1870	29	18
License to do business	36	24
Auditor's report of examination	37	24
Deed to assignee	43	28
Order for payment of stock	44	29
Supersedeas-bond	47	31
Certificate to transcript	48	32
Writ of error to circuit court	48	32
Citation	49	33
Judgment in circuit court	51	33
Supersedeas-bond in circuit court	53	34
Stipulation to file assignment errors	56	35
Assignment of errors	57	35
Certificate to transcript	61	36
Writ of error	62	36
Citation	64	37
Assignment of errors	65	37

2 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. [illegible] mond, circuit judge, on Saturday, the twentieth day of [illegible] year of our Lord one thousand eight hundred and seventy-four, and of the December term of said court, A. D. 1874, and of our [illegible] ninety-ninth year.

WILLIAM H. BRADLEY, *Clerk.*

ALBERT B. PULLMAN, PLAINTIFF IN ERROR,
vs.
CLARK W. UPTON, ASSIGNEE OF THE GREAT Western Insurance Company, a bankrupt, defendant in error. } 12036. Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

3 Be it remembered that on the sixteenth day of October, A. D. 1874, said Albert B. Pullman, plaintiff in error, filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, aforesaid, a transcript of a record, from the district court of the United States for the northern district of Illinois, in the above-entitled cause, and also at the same time filed his bond for costs in said cause.

Which said bond, and also said transcript, together with the writ of error, and citation thereto attached, are respectively in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, October term, A. D. 1874.

4 ALBERT B. PULLMAN
vs.
CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company of Chicago. } In assumpsit.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by , we hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated this 16th day of October, A. D. 1874.

MONROE, BISBEE & GIBBS.

(Endorsed:) Filed Oct. 16th, A. D. 1874. Wm. H. Bradley, clerk.

5 Pleas in the district court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of said court, on Tuesday the twenty-eighth day of July, in the July term of said court, in the year of our Lord one thousand

eight hundred and seventy-four, and of our Independence the ninety-ninth year.

WILLIAM H. BRADLEY, *Clerk.*

CLARK W. UPTON, ASSIGNEE OF THE GREAT Western Insurance Company, a bankrupt, *vs.* ALBERT B. PULLMAN. } No. 4005. Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the seventeenth day of June, A. D. eighteen hundred and seventy-three, came Clark W. Upton, assignee of the Great Western Insurance Company, a bankrupt, plaintiff, by his attorneys, Boutell & Waterman, and filed in the office of the clerk of the district court of the United States for said northern district of Illinois, at Chicago, in said district, his præcipe for a writ of summons against Albert B. Pullman, defendant, and also at the same time filed his bond for costs, and declaration in said-entitled cause; which said præcipe, bond, and declaration are respectively in the words and figures following, to wit:

Præcipe.

In the district court of the United States for the northern district of Illinois, of the July term, A. D. 1873.

CLARK W. UPTON, ASSIGNEE OF THE GREAT Western Insurance Company, a bankrupt, *vs.* ALBERT B. PULLMAN. } Assumpsit. Damages $2,500.

6 The clerk of said court will please issue a summons, returnable as above, to be directed to the marshal for the northern district of Illinois to execute.

BOUTELL & WATERMAN,
Attys. for Plff.

To WM. H. BRADLEY, Esq.,
Clerk of said Court.

(Indorsed:) Filed June 17th, '73. Wm. H. Bradley, clk.

Bond for costs.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

District court of the May term, A. D. 1873.

CLARK W. UPTON, ASSIGNEE OF THE GREAT Western Insurance Company, *vs.* ALBERT B. PULLMAN. } In assumpsit.

We enter our security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of

the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, we hereby agree and stipulate that execution may issue against our property for any costs taxed against him.

Dated this 17th day of June, A. D. 1873.

BOUTELL & WATERMAN.

(Indorsed:) Filed June 17th, 1873. Wm. H. Bradley, clerk.

District court of the United States for the northern district of Illinois, of the May term, in the year A. D. 1873, sitting in bankruptcy.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Clark W. Upton, who is assignee of the Great Western Insurance Company, a corporation heretofore created and existing under the laws of the State of Illinois, and having its principal office in the city of Chicago, within said northern district of Illinois, which said corporation
7 has been heretofore, by the order and judgment of this honorable court, adjudged a bankrupt in accordance with the provisions of an act of Congress of the United States, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and the amendments thereto, by Boutell & Waterman, his attorneys, complains of Albert B. Pullman, defendant in this action, and who has been duly summoned, etc., on a plea of trespass on the case on promises.

For that whereas the said bankrupt, the Great Western Insurance Company, being a corporation created and existing under and in pursuance of an act of the legislature of the State of Illinois, entitled "An act to incorporate the Great Western Insurance Company of Chicago, Illinois," approved February 4th, A. D. 1857, for the purpose of insurance and the taking of risks on all kinds of property, both marine and fire, and deriving profits from the said business of insurance to its stockholders, having a capital stock designated by the express terms of the said act of incorporation, and allowed as the sum of five hundred thousand dollars.

And whereas, afterwards, to wit, on the 25th day of June, A. D. 1870, under and in pursuance of the provisions of the laws of the State of Illinois, the charter of the said company was, by the stockholders and directors thereof, amended, so that its capital stock might be increased to five millions of dollars.

That said capital stock was divided into shares of one hundred dollars each, the subscription and payment for which stock constituted its only fund and means of paying the losses it might meet in the prosecution of its business. Five per cent. of its subscribed capital stock was required to be paid as a company fund in cash, and the balance to be secured to be paid on demand, or otherwise, by approved judgment-notes, by hypothecated stock, mortgages on real estate in Cook County, or other satisfatory security.

That by its charter said corporation was empowered to do any and all acts consistent with the constitution and laws of the State of Illinois.

That by the laws of the State of Illinois, in such case made, it was provided that the corporators of any insurance company organized in the State of Illinois should severally be liable for all debts and
8 responsibilities of such company, to the amount of stock by him or them subscribed, until the whole amount of the capital stock

of such company shall have been fully paid in, and a certificate thereof recorded.

And whereas the said defendant heretofore, to wit, on the first day of July, A. D. 1871, at Chicago, in the northern district of Illinois, subscribed for and took, to wit, twenty-five shares of the capital stock of the said Great Western Insurance Company, and thereby became the owner and holder thereof, and then and there agreed and became bound and obligated thereby to pay the said Great Western Insurance Company twenty dollars per share of one hundred dollars each, in installments, to wit, twenty-five per cent. (of the said twenty dollars) on receipt of the stock certificate, twenty-five per cent. in three months, twenty-five per cent. in six months, and twenty-five per cent. in nine months from the date thereof, the balance, eighty per cent., to stand and remain on subscription without interest.

And whereas, to wit, on the 1st day of July, A. D. 1871, the said Great Western Insurance Company did, in accordance with the terms and conditions of the subscription aforesaid, make, execute, and deliver to the said defendant a certificate of, to wit, twenty-five shares of its capital stock so subscribed for and agreed to be taken by said defendant as aforesaid, which said certificate was taken and accepted by the said defendant, whereby the said defendant became and was a stockholder in said company to the extent of, to wit, twenty-five shares of its capital stock apportioned and set apart to and vested in him as aforesaid, whereby the said defendant became and ever since has continued to be a stockholder in said Great Western Insurance Company, exercising all the rights, powers, and privileges of a stockholder therein, by means whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to said Great Western Insurance Company the sum of one hundred dollars upon each share of the capital stock of the said Great Western Insurance Company so taken, held, and owned by him as aforesaid.

And whereas afterwards, to wit, on the 3d day of January, A. D. 1872, to wit, at Chicago, in the northern district of Illinois, in consequence of great losses which said insurance company had prior to that time sustained by fire in the said city of Chicago aforesaid, and elsewere, whereby its entire cash capital and assets were exhausted by reason of its liability to its policy-holders, and to an amount greatly exceeding all its cash funds and means of payment, and in an amount largely in excess of all sums that can be collected on its entire unpaid capital stock and assets, which said liabilities are still outstanding, due, and unpaid, and for the purpose of providing means of payment thereof to said insurance company by a vote of its directors and stockholders duly convened for that purpose, to wit, on the day and year aforesaid, to wit, at Chicago, in the northern district of Illinois aforesaid, duly assessed, called in, and ordered paid, to wit, twenty per cent. of the then remaining unpaid eighty per cent. on each share of stock, to wit, twenty dollars on each share thereof so held by its stockholders on said unpaid capital stock, of which the said stockholders then and there had notice; that only a small amount, to wit, twenty per cent., had been paid on the stock subscribed for and held by the said defendant as aforesaid, and which said sum so assessed, called in, and ordered paid is still due and owing from said defendant.

And whereas afterwards, in consequence of its losses so sustained as aforesaid, and the delinquencies of its stockholders in the payment of the calls so made upon them as aforesaid, the said Great Western Insurance Company became unable to meet its liabilities, and upon a

petition filed in bankruptcy on the 17th day of January, 1872, by Richard M. Hooley against the said Great Western Insurance Company, the said insurance company was afterwards, to wit, on the sixth day of February, A. D. 1872, adjudicated a bankrupt by the district court of the United States for the northern district of Illinois, in pursuance of the act of Congress of the United States in such case made and provided, as by the records thereof now remaining in said court will more fully and at large appear.

And whereas afterwards, to wit, on the eleventh day of April, A. D. 1872, the said Clark W. Upton was duly appointed assignee in bankruptcy of the estate of the said Great Western Insurance Company in conformity with law, and a deed of assignment of all the
10 estate, effects, and property of the said Great Western Insurance Company, a bankrupt as aforesaid, was executed in due form of law, under the hand and seal of Homer N. Hibbard, esq., register in bankrupt'y for the first congressional district of the State of Illinois, and delivered to the said Clark W. Upton, so appointed assignee as aforesaid, thereby vesting in the said assignee the estate, property, and effects of the said bankrupt.

And whereas this honorable court, sitting in bankruptcy, in and for the northern district of Illinois, on the application and petition of the said Clark W. Upton, assignee of the estate of said bankrupt as aforesaid, to wit, on the 5th day of July, A. D. 1872, made and entered of record in this honorable court a call upon the stockholders of the said bankrupt for the full payment of the entire unpaid capital stock of the said bankrupt, severally held by them and each of them, and ordered the same paid as hereinafter set forth; which said call and order of payment was of the following tenor and effect, to wit:

IN THE MATTER OF THE GREAT WESTERN INSURANCE COMPANY, bankrupt. } In bankruptcy.

And now, on this day, comes C. W. Upton, assignee of the estate of said bankrupt, and makes application to this court showing that a large amount of the capital stock of the said bankrupt remains unpaid in part; that the whole amount of such capital stock will be required to be paid in order to meet the demands now due from and proven against the estate of said bankrupt, and upon investigation of the facts in the matter, and the court being fully advised in the premises, it is ordered that the entire amount unpaid on the capital stock of the said bankrupt be paid to said assignee, on or before the 15th day of August, A. D. 1872, at his office in Chicago, Illinois, and in default thereof, that said assignee proceed to collect the same. It is further ordered that notice of this call be given to the stockholders of said bankrupt, so far as known, without unreasonable delay, by publication or otherwise.

And the plaintiff, assignee as aforesaid, avers that notice in accordance with the terms and conditions of said order of this honorable court was duly given to the stockholders of said bankrupt, as therein and thereby required.

11 That a small amount, to wit, twenty per cent. only, has been paid upon each of the said shares of stock in the bankrupt company which are now held and owned by the said defendant. And whereas the said company did publish and advertise the entire amount unpaid upon its capital stock issued, including the amount unpaid upon the stock by the defendant held as aforesaid, as a part of its resources wherewith to pay losses and protect its creditors, and did procure the

insurance, the losses upon which are now due and unpaid, and for the indebtedness upon which losses render it now insolvent: upon such publication and advertisement, and by reason of the facts aforesaid, the said defendant is now indebted thereon to the plaintiff as assignee as aforesaid for the remaining unpaid portion, to wit, eighty per cent. thereof, to wit, for the sum of, to wit, two thousand dollars, and being so indebted, said defendant then and there promised the plaintiff to pay him said sum of ten thousand dollars on demand.

Yet the said defendant, although often requested, has not paid the said several sums of money or either or any part thereof, but has wholly neglected and refused so to do.

And whereas, also, the said defendant heretofore, to wit, on the 1st day of January, A. D. 1872, to wit, at Chicago, in the northern district of Illinois, being the holder and owner of, to wit, twenty-five other shares of one hundred dollars each of the capital stock of the Great Western Insurance Company aforesaid, upon which had been paid a small sum, to wit, twenty per cent. thereof, or twenty dollars on each share thereof, the residue and balance due thereon, to wit, being eighty per cent. thereof, to wit, eighty dollars on each share thereof, being subject to assessment on call of the said company, its board of directors, agents, or creditors, whenever thereafterwards the same should be required to pay their debts or liabilities of the said Great Western Insurance Company, in the due course of its business as an insurer against fire or marine losses, or both.

And whereas the said Great Western Insurance Company in consequence of losses sustained by its policy-holders, for which it became and was liable to pay, and indemnify against, to an amount
12 greatly exceeding all its assets, and more than can be collected upon all of its said assets and unpaid capital stock, and which said liabilities are now subsisting and wholly unpaid, all of which the defendant had notice, and in consequence of the non-payment thereof, the said Great Western Insurance Company has been by the judgment and order of the district court of the United States for the northern district of Illinois, sitting in bankruptcy, on petition duly filed in said court for that purpose by its creditors, duly adjudged a bankrupt, in pursuance of the laws of the United States in that behalf enacted and provided, of which defendant had notice; and whereas upon such adjudication the said Clark W. Upton was appointed the assignee of the estate of the said bankrupt, under and in pursuance of the bankrupt-laws of the United States in that behalf enacted, and as such assignee now holds the estate of said bankrupt, in pursuance of said bankrupt-law as aforesaid.

And whereas the said United States district court, sitting in bankruptcy, on petition duly filed for that purpose, did order and adjudge, among other things, that the whole amount of the unpaid capital stock of said insurance company, bankrupt, will be required to be paid, in order to meet its liabilities and demands proven in bankruptcy against said bankrupt, and did further order that the entire amount unpaid on the capital stock of the said bankrupt insurance company be paid by its stockholders, to the said plaintiff as assignee as aforesaid, on or before the 15th day of August, A. D. 1872, at his office in Chicago, Illinois, of which said defendant then and there had notice, as by the records and proceedings of the said court will more fully and at large appear, which said time has long since elapsed.

By means whereof, and by force of the statutes in such case made and provided, the said defendant became and is liable to pay to said

plaintiff a large sum of money, to wit, eighty per cent. or eighty dollars on each share of stock so held and owned by him as aforesaid, to wit, two thousand dollars, and being so liable said defendant then and there undertook and promised to pay said plaintiff, as said assignee, said last mentioned sum on demand, and which, though often requested, said defendant wholly neglects and refuses to pay, or any part thereof.

13 And whereas, also, the said defendant heretofore, to wit, on the 1st day of January, A. D. 1872, at Chicago, in the northern district of Illinois aforesaid, became and was indebted to the Great Western Insurance Company, which said insurance company has been duly adjudged a bankrupt in pursuance of law, for, to wit, twenty-five shares of the capital stock of said company, of one hundred dollars each, before that time bargained, sold, set apart, and transferred to him, said defendant, by the said insurance company, on the books of said company, at his, said defendant's, special instance and request, the certificates whereof were delivered to said defendant; and being so indebted to the said defendant in consideration thereof, afterwards, to wit, on the day and year last aforesaid, to wit, at Chicago aforesaid, undertook, and then and there faithfully promised the said plaintiff, as the assignee in bankruptcy of the estate of the said Great Western Insurance Company, bankrupt as aforesaid, duly appointed according to law, to pay him therefor when he the said defendant should be thereunto afterwards requested.

And also for that whereas heretofore, to wit, at Chicago, in the northern district of Illinois, on, to wit, the 1st day of January, A. D., 1872, the said defendant, at his special instance and request, became and was the legal owner of certain, to wit, twenty-five other shares of the stock of the said Great Western Insurance Company, of the par value of one hundred dollars each, upon which said stock there was unpaid and uncalled for at the said time, when the said defendant became the said legal owner thereof, to wit, the sum of eighty dollars per share, the payment of which said sum of eighty dollars per share always heretofore had been, and at the time the said defendant became the legal owner thereof as aforesaid was, unsecured to said company save by the obligation of whoever might be the legal owner thereof to pay the same, and which said sum of eighty dollars per share he, the said defendant, upon becoming the legal owner of said stock, in consideration of the rights and privileges thereby by him, said defendant, acquired, promised and agreed to and with said company that he the said defendant would pay to said company upon each and every of said

14 shares so by him owned as aforesaid whenever he the said defendant should be legally and properly called upon so to do.

And the plaintiff saith that said defendant hath often been legally and properly called upon to pay the said sum of eighty dollars per share upon each of said, to wit, twenty-five shares so by him owned as aforesaid, to wit, the sum of, to wit, two thousand dollars, and that he, said defendant, was at the time of so being called upon to pay said sum the legal owner of, to wit, said twenty-five shares of said stock. Nevertheless he, the said defendant, hath not paid the same or any part thereof to said company, or to this plaintiff, whereby an action hath accrued to this plaintiff as assignee in bankruptcy to have and demand of the said defendant the said sum of, to wit, two thousand dollars.

And whereas, also, the said defendant afterwards, to wit, on the day and year last aforesaid, at Chicago, in the northern district of Illinois aforesaid, was indebted to the said plaintiff, assignee as aforesaid, in the further sum of, to wit, two thousand dollars like lawful money for, to

wit, twenty-five shares of the capital stock of the Great Western Insurance Company, theretofore issued, and delivered to him the said defendant, of the par value of one hundred dollars per share, by the Great Western Insurance Company, at his the said defendant's special instance and request, and which said shares of said capital stock were severally at the commencement of this suit owned and held by him, the said defendant, and being so indebted, he the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Chicago aforesaid, undertook and then and there faithfully promised to pay said last mentioned sum of money when he the said defendant should be thereunto afterwards requested; yet, though often requested, said defendant wholly neglects and refuses to pay therefor, or for any part thereof.

And whereas also afterwards, to wit on the day and year last aforesaid, to wit, at Chicago aforesaid, in consideration that the Great Western Insurance Company, a corporation theretofore created and existing under and in pursuance of the laws of the State of Illinois, at the like special instance and request of the said defendant, had before
15 that time issued in due form of law, and delivered to him, the said defendant, to wit, twenty-five shares of its capital stock, of the par value of one hundred dollars; for each and every share so issued and delivered to said defendant, he, the said defendant, undertook and then and there faithfully promised the said Great Western Insurance Company, and the said plaintiff, as its assignee, legally appointed, to pay for the said share so issued to and held by him, the said defendant as aforesaid, the sum of one hundred dollars for each and every share of the said capital stock so issued and delivered to him, the said defendant, as aforesaid, when he should be thereunto afterwards requested; yet, though often requested, said defendant has not paid the said sum of money, or any part thereof, to the said Great Western Insurance Company, or to the plaintiff, its assignee as aforesaid, but wholly neglects and refuses so to do.

And whereas, also, the said defendant heretofore, to wit, on the 1st day of January, A. D. 1872, at Chicago, in the northern district of Illinois, was indebted to the Great Western Insurance Company, a corporation theretofore created and existing under and in pursuance of the laws of the State of Illinois, and to the plaintiff at the commencement of this suit, as assignee thereof, for that purpose duly appointed, for divers stocks, goods, and chattels, to wit, twenty-five shares of the capital stock of the Great Western Insurance Company, of the par value of one hundred dollars, for each and every share before that time subscribed for, issued to, and held by the said defendant, at his special instance and request, whereby the said defendant became and was a stockholder in said Great Western Insurance Company, the rights and privileges whereof the said defendant used and enjoyed, with the gains and profits thereunto pertaining, and, being so indebted, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the said city of Chicago aforesaid, undertook and then and there faithfully promised the said plaintiff's assignee as aforesaid to pay him for the said goods, chattels, and stock, at the rate of one hundred dollars per share thereof, when he, the said defendant, should be thereunto afterwards requested.

Yet, though often requested, the said defendant wholly neglects
16 and refuses to pay either of the sums of money in the several counts of this declaration mentioned, or any part thereof, to the said plaintiff, assignee as aforesaid; to the plaintiff's damage as assignee

as aforesaid, as he says, in the sum of twenty-five [illegible] therefore he brings suit.

BOUTELL & WATERMAN,
Attys. for Plaintiff.

(Indorsed:) Filed June 17, '73. Wm. H. Bradley, clk.

Afterwards, to wit, on the same day, to wit, the 17th day of June, A. D. 1873, said defendant, by his attorneys; filed in said clerk's office [illegible] plea in said entitled cause; which said plea is in the words and figures following, to wit:

Plea.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

District court of the United States, in and for said district.

CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of Great Western Insurance Company, a bankrupt,
vs.
ALBERT B. PULLMAN.
} Assumpsit.

And now comes said defendant, by Monroe, Bisbee & Gibbs, his attorneys, and defends the wrong and injury, when, etc., and says that he did not undertake or promise in manner and form as said plaintiff has in his declaration thereof complained against him; and of this he puts himself upon the country, etc.

MONROE, BISBEE & GIBBS,
Defts. Atty.

(Indorsed:) Filed June 17, '73. Wm. H. Bradley, clk.

Afterwards, to wit, on the 28th day of July, A. D. 1874, the following stipulations were filed in said entitled cause; which said stipulations are in words and figures following, to wit:

17 *Stipulation as to evidence.*

United States district court, northern district of Illinois, ss:

CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company,
vs.
ALBERT B. PULLMAN.

It appears from the testimony in this case that in the summer of 1871 one David Meyers assigned twenty-five shares of the stock of said company to defendant as collateral security, on which twenty per cent had been paid, and that prior to the fire of Oct. 9, '71, defendant caused said shares to be transferred on the books of said company to himself. The defendant introduced evidence tending to show that this transfer was made on the evening of Saturday, Oct. 7, '71, and that Hart E.

Stewart, the president of the company, knew that deft. took and held said stock as c llateral security for a loan of $1,800 made by him to said Myers.

It is stipulated that the foregoing is a correct statement of the testimony in this case relating to the points therein referred to.

BOUTELL & WATERMAN,
Attys. for Plff.
MONROE, BISBEE & GIBBS,
Attys. for Deft.

(Indorsed:) Filed July 28, '74. Wm. H. Bradley, clk.

Stipulation to waive jury, etc.

United States district court, northern district of Illinois.

CLARK W. UPTON, ASSIGNEE GREAT WESTERN Ins. Co.,
vs.
A. B. PULLMAN.

It is stipulated in this case that it shall be tried before Judge Blodgett, without a jury, and, if carried upon writ of error, the writ of
18 error shall be presented in time to have the case entered in the U. S. Supreme Court, at the October term, 1874.

MONROE, BISBEE & GIBBS,
Attys. for Defendant.
UPTON, BOUTELL & WATERMAN,
Attys. for Plff.

(Indorsed:) Filed July 28, '74. Wm. H. Bradley, clerk.

Afterwards, to wit, on the 28th day of July, in the July term, A. D. 1874, of said court, in the record of the proceedings thereof in said entitled cause, appears the following entry, to wit:

Judgment.

CLARK W. UPTON, ASSIGNEE OF THE GREAT Western Insurance Company, a bankrupt,
vs.
ALBERT B. PULLMAN.
} Assumpsit.

Now come the parties, by their attorneys, and by agreement, as per stipulation filed, they waive the intervention of a jury, and for trial of this case submit themselves to the court. And the court, after hearing the evidence, finds the issue for the plaintiff, and assesses his damages in the sum of two thousand two hundred and thirty-four dollars.

It is thereupon considered and adjudged by the court that said plaintiff do have and recover of and from said defendant the sum of two thousand two hundred and thirty-four dollars, his damages as aforesaid, together with his costs and charges in this behalf expended, amounting to the sum of thirty-seven dollars and ninety cents, and that execution issue therefor.

On the hearing of said cause the following exceptions were taken, and were allowed by the court and made of record, and are in the words and figures following, to wit:

Bill of exceptions.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

19 In the district court of the United States, in and for said district.

CLARK W. UPTON, ASSIGNEE OF THE GREAT Western Insurance Company, a bankrupt, *v.* ALBERT B. PULLMAN. } Bill of exceptions.

Be it remembered that upon the trial of this cause by the honorable Henry W. Blodgett, judge presiding, (a jury therein having been waived by the stipulation of said parties, filed herein,) the plaintiff, to maintain the issue on his part, offered in evidence a pamphlet copy of the by-laws, prospectus, and charter of the Great Western Insurance Company; which are as follows, to wit:

PROSPECTUS AND CHARTER.

Prospectus of the Great Western Ins. Co., showing charter, by-laws, place of business, etc. Great Western Insurance Company. Central office, Chicago, Illinois. Capital stock, $5,000,000.00. Subscribed capital, 1,188,000.00. Cash capital, 222,831,00. Chicago: Jno. W. Dean, printer, 115 & 117 Dearborn st. 1871.

EFFECTIVENESS OF PLAN.

The plan on which this company is organized is simple and effective. It proposes the most simple and perfect protection to policy-holders, and a rapid accumulation of business at the smallest ratio of expense. The amount of the capital stock is $5,000,000, with twenty per cent. paid in, thus securing a guarantee capital to policy-holders at once of $1,000,000. Dividends are to be made semi-annually in cash, not to exceed five per cent. If the semi-annual dividends exceed this amount (ten per cent. per annum) the sum will go toward paying up the remaining unpaid eighty per cent. The capital is not taken by a few persons, but is
20 to be widely distributed. Wherever $10,000 or more is subscribed, a branch office is established, with president and local board of officers. The stock at each locality will be represented at the annual meeting by the president or directors, or their legal representatives.

The managers and directors of the branches constitute an advisory board of management for the advancement of business, to guard against bad risks, and to promote the general interests of the company.

Great Western Fire-Insurance Company, cor. La Salle and Monroe streets, Chicago; H. L. Stewart, president; C. D. Hooker, secretary; R. J. Waters, vice-president; M. P. Stone, treasurer.

STATEMENT, JANUARY 1ST, 1871.

Subscribed capital	1,188,000 00
Cash capital	222,831 42
Surplus	51,862 12
Assets, January 1st, 1871	274,693 54

ASSETS.

First mortgages on real estate, duly recorded	183,275 00
Cash in hand and in bank	16,622 37
Chicago West Side Park bonds	360 00
C. & N. W. R. R. land certificates	4,530 00
Interest on mortgages, (not due)	10,345 25
Bills receivable, cash premiums on farm-risks	16,607 04
Interest on same	519 87
City collections and accounts	11,503 83
Office furniture and personal property	4,219 47
Due from agents and insurance companies	26,710 71

LIABILITIES.

Losses adjusted, (paid since statement)	1,417 68
Losses in process of adjustment	3,183 71
All other claims	1,634 09

STATE OF ILLINOIS,
Auditor's Office, Department of Insurance:

Whereas the Great Western Insurance Company, located at Chicago, in the State of Illinois, has filed in this office a statement of the
21 condition of its affairs, as required by the provisions of an act approved March 11, 1869, showing that it is possessed of the requisite amount of capital invested as required be law; and whereas an examination of the affairs and conditions of said company, made by me in pursuance of the provisions of the act aforesaid, has fully verified the statement as filed in this office by said company:

Now, therefore, in pursuance of the provisions of the act aforesaid, I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the said Great Western Insurance Company is authorized to transact its appropriate business of fire insurance in this State, in accordance with the laws thereof, until the 31st day of January, A. D. 1872.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office, at Springfield, Ills., this 28th day of February, A. D. 1871.

C. E. LIPPINCOTT,
Auditor of Public Accounts.

To the introduction of which the defendant objected, on the ground that there is nothing to show that the fourth section of said charter was ever amended as it purports to be, or that the capital stock was ever increased from $100,000 to $500,000, and also because the charter itself is a public act, and appears so in the authorized edition of the laws of Illinois, and should be shown in that way. Which objections were overruled by said court, and said pamphlet and charter read in evidence. To which said defendant then and there excepted.

And that said plaintiff offered in evidence a certified copy of the papers on file in the auditor's office of the State of Illinois, of the proceedings amending the charter of the company so as to authorize the increase of the capital stock of said company; which certified copy is as follows:

AUDITOR'S CERTIFIED COPY OF PROCEEDINGS INCREASING CAPITAL STOCK.

STATE OF ILLINOIS, AUDITOR'S OFFICE,
Department of Insurance:

22 I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that I have compared the annexed copies of papers in the matter of the increase of capital of the Great Western Insurance Company of Chicago, Illinois, with the original on file in this office, and that the same are correct transcripts therefrom and of the whole of said originals.

In witness whereof I have hereunto set my hand and affixed my official seal at the city of Springfield, this twenty-ninth day of August, A. D. 1872.

[AUDITOR'S SEAL.]

C. E. LIPPINCOTT,
Auditor of Public Accounts.

OATH OF DIRECTORS.

STATE OF ILLINOIS,
Department of Insurance, Auditor's Office.

Blank No. 6. (Copy.)

OFFICE OF THE GREAT WESTERN INSURANCE COMPANY,
Chicago, Illinois, August 22nd, 1870.

We, the undersigned directors of the Great Western Insurance Company of Chicago, Illinois, being duly sworn according to law, depose and say, and each one for himself says, that we compose a majority of the directors of the Great Western Insurance Company of Chicago, Illinois, aforesaid; that said Great Western Insurance Company has a capital stock of five million dollars, divided into fifty thousand shares of one hundred dollars. One million and twelve thousand dollars of said capital is subscribed, and that eighteen and $\frac{22}{100}$ (averaged) dollars upon each share, amounting in the aggregate to one hundred eighty-six thousand three hundred and thirty-five and $\frac{92}{100}$ dollars has been paid in by the several holders of the stock of said company, and said money has been paid in, in cash, by the stockholders towards the payment of their respective shares, and not for any other purpose whatever. And it is intended that the same shall remain as the capital of the company, and that the same is now invested, as required by the laws of this State.

H. L. STEWART.
JAMES MONTGOMERY.
H. A. BECK.
J. D. WOODWARD.
23 R. J. WATERS.
C. D. HOOKER.
CHAS. J. STOKES.
WASHINGTON LIBBY.
CHAS. B. SMITH.
A. S. PECK.
M. SMITH.
G. N. ARCHIBALD.
J. M. W. JONES.
E. EUGENE CALDWELL.
W. N. STURGES.
CHAS. V. DYER.
J. McK. SANGER.
L. S. MAJOR, $5,000 stock, 20 per cent. paid in.

Subscribed and sworn to before me by each of the subscribers hereto on this 22d day of August, 1870.

Given under my hand and official seal.

[NOTARIAL SEAL.] GEORGE C. CHRISTIAN,
Notary Public.

(Indorsed:) Filed August 23rd, 1870. C. E. Lippincott, auditor public accounts.

NOTICE.

The Great Western Insurance Company of Chicago, Illinois, hereby gives notice that it is the intention to increase its capital stock to five million dollars, three-fourths in amount of the stockholders thereof having given their written consent to such measure.

H. L. STEWART, *President.*

C. D. HOOKER, *Secretary.*

CHICAGO, ILLINOIS, *June 25th*, 1870.

I, the undersigned, one of the publishers of the Chicago Tribune, do hereby certify that a notice, of which the annexed is a true copy, was published for four successive weeks, to wit, four times in the daily edition of the Chicago Tribune, a newspaper published in the city of Chicago, and of general circulation throughout the county of
24 Cook, and State of Illinois, and that the date of the first paper containing the same was the 29th day of June, A. D. 1870, and that the date of the last paper containing the same was the 20th day of July, A. D. 1870.

Dated at Chicago this 23rd day of July, 1870.

[COMPANY'S SEAL.] TRIBUNE CO. PUBLISHERS,
By J. T. FLYNN, *Cashier.*

[5-cent U. S. int. rev. stamp.]

We the undersigned stockholders of the Great Western Insurance Company, of Chicago, Illinois, do hereby assent to and express our desire that the capital stock of said company shall be increased to five millions of dollars.

STOCKHOLDERS.

Names.	Names.
H. L. Stewart.	M. Smith.
C. D. Hooker.	E. C. Stevens.
H. H. Peck.	J. D. Woodward.
Simeon Chase.	Fernando Jones.
Chas. J. Stokes.	James W. Rees.
R. J. Waters.	John W. Dean.
J. T. Foster.	A. S. Peck.
Chas. B. Smith.	Louis Nelkee.
J. R. Shipherd.	O. D. Moores.
J. McK. Sanger.	J. B. Sullivan.
Washington Libby.	Cass, Porter & Barrows.
J. S. Wallace.	Peter Caldwell.
L. P. Sanger.	Abram Van Dusen.
Benjamin Carver.	Luterlen, Classen & Co.

Philip Wadsworth.	Lewis Benedict.
James Montgomery.	Frederick Herhold.
John Lassen.	W. N. Stargess.
Chas. V. Dyer.	H. H. Newell.
John F. Eberhart.	A. B. Pullman.
Austin Crover.	P. Shirley.
O. L. Mann.	A. C. Stewart.
J. M. W. Jones.	E. Eugene Caldwell.
Robert H. Foss.	Mary C. Sanger.
Chas. Sohn.	E. Van Buren.

L. S. Major.

25 CHARTER OF THE GREAT WESTERN INSURANCE COMPANY, OF CHICAGO, ILLINOIS.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That William W. Danenhower, Jacob Russell, Thomas Hale, George Ely, Robert H. Foss, and their successors and associates, be, and are hereby, created a body corporate and politic, under the name and style of the Great Western Insurance Company, situated at Chicago, and by that name shall have and enjoy all the rights and privileges and immunities that other like corporations have, and be recognized in all courts of justice and equity in this State.

SEC. 2. When the said party and their associates shall have subscribed one hundred thousand dollars, paying in, as a company fund, five per cent. on the amount subscribed, and securing the balance to be paid, on demand or otherwise, by approved judgment-notes, by hypothecated stock, mortgages on real estate in Cook County, or other satisfactory security, and shall have chosen nine directors, and these directors shall have chosen one of their number president and appointed a secretary and treasurer, it shall be deemed fully organized, and enjoy the powers herein conferred.

SEC. 3. The said company shall have power to make insurance, and take risks on all kinds of property, both marine and fire, and charge and receive such premiums as may be agreed by and between the parties, either upon the mutual or stock principle, or both.

SEC. 4. The company shall have power to use, invest, or loan its surplus funds in or on bottomry or respondentia, in bonds, mortgages, or personal security, at such rates as private persons may legally do by the laws of this State, and may increase its capital to five hundred thousand dollars.

SEC. 5. The said company may establish agencies, and do all acts not inconsistent with the constitution, the laws of this State, or the United States necessary to and for the full use and enjoyment and to carry out the full objects of this act.

SEC. 6. This act shall be deemed a private act, and be liberally construed for the purposes therein contained, and take effect from and after its passage.

Approved February 4th, 1857.

26 AMENDMENT TO SECTION 4.

It is desired that this charter be amended so that section four (4) shall read:

The company shall have power to use, invest, or loan its surplus funds in or on stocks, bottomry, and respondentia, in mortgages or personal

securities, at such rates as private persons may legally do by the laws of this State, and may increase its capital to five millions of dollars.

Given under the seal of the Great Western Insurance Company, this twenty-seventh day of June, 1870.

[GREAT WESTERN INS. CO. SEAL.] H. L. STEWART,
President.

C. D. HOOKER, *Secretary.*

STATE OF ILLINOIS,
Attorney-General's Office:

SPRINGFIELD, *July 28th*, 1870.

I, Washington Bushnell, attorney-general of the State of Illinois, do hereby certify that I have examined the charter, amendments thereto, proof of publication, and the accompanying papers, in the matter of an increase of capital of the Great Western Fire Insurance Company of Chicago, Illinois, to five millions of dollars, and I find said papers conformable to the act of the general assembly of the State of Illinois, approved March 11th, 1869, and entitled "An act to incorporate and to govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois," and not inconsistent with the laws and constitution of the State of Illinois.

W. BUSHNELL,
Attorney-General of Ill's.

To General C. E. LIPPINCOTT,
Auditor P. A., Springfield, Ill's.

AUDITOR'S OFFICE, ILLINOIS,
BUREAU OF INSURANCE,
Springfield, November 15, 1872.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify, from papers on file in this office, that
27 on the 22d day of August, A. D. 1870, the capital stock of the Great Western Insurance Company of Chicago, Illinois, was, by the action, consent, and request of its stockholders and board of directors, authorized to be increased to the sum of five million dollars; and the fourth section of the original act of incorporation of said company was thereby amended and altered so that its capital stock might be increased to five million dollars, in conformity to an act of the general assembly of the State of Illinois approved March 11th, 1869.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and date first above written.

[AUDITOR'S SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

That the defendant objected to the introduction of the same, on the ground that the names of the stockholders purporting to be signed thereto were not signed thereto by the stockholders, and that the names of the directors purporting to be signed thereto were not signed by the directors; which objections were overruled by said court, and said copy read in evidence; to which said defendant then and there duly excepted.

And that said plantiff offered in evidence a certified copy from the auditor's office of the State of Illinois of the charter of said company, so amended; which is in words and figures following, to wit:

CERTIFIED COPY OF AMENDED CHARTER.

[Charter.—An act to incorporate the Great Western Insurance Company of Chicago, Illinois.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, That William W. Dannenhower, Jacob Russell, Thos. Hale, George Ely, Robert H. Foss, and their successors and associates, be, and are hereby, created a body corporate and politic, under the name and style of the Great Western Insurance Company, situated at Chicago, and by that name shall have and enjoy all the rights and privileges and immunities that other like corporations have, and be recognized in all courts of justice and equity in this State.

SEC. 2. When the said party and their associates shall have subscribed one hundred thousand dollars, paying in as a company fund five per cent. on the amount subscribed, and securing the balance to be paid on demand or otherwise, by approved judgment notes, by hypothecated stock, mortgages on real estate in Cook County, or other satisfactory security, and shall have chosen nine directors, and those directors shall have chosen one of their number president, and appointed a secretary and treasurer, it shall be deemed fully organized, and enjoy the powers herein conferred.

SEC. 3. The said company shall have power to make insurance and take risks on all kinds of property, both marine and fire, and charge and receive such premiums as may be agreed by and between the parties, either upon the mutual or stock principal, or both.

SEC. 4. The company shall have power to use, invest, or loan its surplus funds in or on stocks, bottomry, and respondentia, in bonds, mortgages, or personal security, at such rates as private persons may legally do by the laws of this State, and may increase its capital to five hundred thousand dollars.

SEC. 5. The said company may establish agencies, and do all acts not inconsistent with the constitution, the laws of this State, of the United States, necessary to and for the full use and enjoyment and to carry out the full objects of this act.

SEC. 6. This act shall be deemed a private act, and be liberally construed for the purposes therein contained, and take effect from and after its passage.

Approved February 4, 1857.

WM. H. BISSELL,
Governor.
SAMUEL HOLMES,
Speaker of the House.
JOHN WOOD,
Lieut. Governor and Speaker of the Senate.

UNITED STATES OF AMERICA,
State of Illinois, ss:

I, Ozias Hatch, secretary of state of the State of Illinois, do hereby certify that the foregoing is a true copy of an enrolled law now on file in my office.

In witness whereof I have hereunto set my hand and affixed the great seal of State, at the city of Springfield, this 4th day of February, A. D. 1857.

OZIAS M. HATCH,
Sec'y of State.

29 Amendment to 4th section of charter, adopted by resolution of the stockholders, and approved by the directors of said company, June 25th, 1870, in accordance with the general insurance law of the State of Illinois, entitled "An act to incorporate and to govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois," approved March 11th, 1869:

"Resolved, That the capital stock of this company be increased to five millions of dollars."

STATE OF ILLINOIS,
Insurance Department of Auditor's Office, ss:

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing is a true copy of the amended charter of the Great Western Insurance Company of Chicago, Illinois, now on file in my office.

In witness whereof I have hereunto set my hand and affixed my seal of office at the city of Springfield, this twenty-eighth day of August, A. D. 1872.

[AUDITOR'S SEAL.] C. E. LIPPINCOTT,
Auditor P. A.

And also a certified copy from said auditor's office of the report of said company, made to the said auditor in December, 1870, which is in the words and figures following, to wit:

CERTIFIED COPY OF REPORT OF DECEMBER, 1870.

STATE OF ILLINOIS,
Auditor's Office, Department of Insurance:

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that I have compared the annexed copy of the annual statement of the condition of the Great Western Insurance Company of Chicago, Illinois, for the year ending Dec. 31st, 1870, made to this office pursuant to law, with the original on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original statement.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Springfield, this nineteenth day of November, A. D. 1872.

[AUDITOR'S SEAL.] C. E. LIPPINCOTT,
Auditor of Public Accounts.

30 STATE OF ILLINOIS,
Auditor's Office, Department of Insurance:

Annual statement of the condition of the Great Western (Fire) Insurance Company of Chicago, in the State of Illinois, for the year ending on the 31st day of December, 1870, made to the auditor of public accounts of the State of Illinois, pursuant to the laws of said State.

I.—CAPITAL.

The amount of capital stock of the company now outstanding (par value of shares, $100 each) is.....	$1,188,000 00
The amount of paid up capital stock of the company...	222,831 42
Amount of unpaid subscribed capital for which the subscribers or holders are liable.....	965,168 58

The amount of cash on hand in the company's office	$419 16	
The amount of cash deposited in the 3d Nat'l Bank	6,022 37	
The amount of cash deposited in the Wilkins and Stone's Bank	16,000 00	
The amount of cash in hands of agents and in course of transmission	23,300 55	
Total		$45,742 08
Loans on bonds and mortgage (duly recorded, and being first liens on the fee-simple) upon which less than one year's interest is due, as per Schedule B		183,175 00

	Total par value. Dols. Cts.	Total market value. Dols. Cts.	
Chicago West Side City Park bonds, 8 per cent	360 00	360 00	
C. and N. W. R. R. land-certificates	9,060 00	4,530 00	
Total par and market value (carried out at market value)	9,420 00	4,890 00	4,890 00
Interest accrued, but not due			10,345 25
Bills receivable, held by the company, considered good			16,607 04
Amount of United States internal-revenue stamps on hand			51 25
Office furniture, horse, buggy, and outfit, personal property			4,212 47
Due from Ins. Co.'s and city collections			11,568 45
The aggregate amount of all the actual available assets of the company			274,124 23

III.—Liabilities.

	Dols. Cts.	Dols. Cts.
Amount of losses adjusted, but not due	1,417 68	
Amount of losses incurred during the year, including those claimed and not yet due, and including those reported upon which no action has been taken	3,183 71	
Total amount of losses unpaid, including those unadjusted, reported, and resisted		4,601 39
Amount of unearned premium or premiums received on unexpired risks	$80,838 69	
Amount required to safely re-insure all the outstanding risks of the company, estimated at an average of 40 per cent, of unexpired premiums		32,335 47
Amount of all other claims against the company, consisting of the following items		1,634 09
Bills payable:		
Aggregate amount of all unpaid losses, claims, and liabilities (except capital stock)		38,570 95

IV.—Income.

	For fire-risks. Dols. Cts.	Dols. Cts.
Gross amount of cash actually received during the year for premiums	74,996 58	
Deduct amount paid for re-insurance, and amount paid to the insured for drawbacks and return premiums	2,245 19	
Total nett amount of cash actually received during the year for premiums, (carried out)		72,751 39
Premiums on risks written during the year, not actually paid in cash during the year, including all premiums paid by notes or bills upon which cash has not been received during the year, (carried inside)	8,087 30	
Aggregate amount of income actually received during the year, in cash		72,751 39

V.—Expenditures.

	For fire-risks. Dol's. Cts.	
Amount paid for losses which occurred during the year, deducting savings and salvage	5,344 11	
Total amount actually paid during the year for losses		$5,344 11
Amount paid during the year to agents, brokers, and persons other than officers and directors of the company, for commissions on premiums		5,966 64
Amount paid during the year for salaries, fees, and all charges of officers and directors of the company		11,985 99
Amount paid during the year for national taxes and duties		1,498 69
General expenses and supplies, adv		33,678 78
		$58,474 21

VI.—Miscellaneous.

	Fire-risks. Dollars. Cts.	Aggregate. Dollars. Cts.
Gross amount of risks written during the year	4,199,939 96	
Deduct amount of re-insurance effected thereon	30,500 00	
Nett amount of risks written during the year		4,169,439 96

	Having not more than one year to run. Dollars. Cts.	Having more than one, and not more than three years to run. Dollars. Cts.	Having more than three years to run. Dollars. Cts.	Aggregate. Dollars. Cts.
Amount of fire-risks inforce at the end of the year.....	3,922,931 63	170,945 00	75,553 33	

32 Aggregate amount of risks in force Dec. 31st, 18 — 4,169,430 96

Total amount loaned to directors of the company on bond and mortgage, stock, and other loans..... — 143,000 00

The least amount of the company's stock owned by any one of the directors, at its par value, is..... — 500 00

The total amount of the company's stock owned by all of the directors, at its par value, is..... — 719,000 00

The par value of the stock of the company, per share, is $100; market-value, per share, $20.

Are dividends declared on premiums received for risks not terminated? Answer. Yes.

The number of agents employed by the company in the State of Illinois is 93.

The principal office of the company is located at Chicago, Cook Co., Illinois.

The company was incorporated Feb'y 4, 1857. Commenced business June 27, 1870. The duration of the charter is perpetual.

	Fire-risks. Dollars. Cts.
Amount of risks taken during the past year in the State of Illinois.....	2,010,135 18
Amount of premiums received during past year in the State of Illinois.....	33,373 18
Amount of losses incurred during the past year in the State of Illinois.....	3,568 92

33 STATE OF ILLINOIS,
County of Cook:

H. L. Stewart, president, and C. D. Hooker, secretary of the Great Western Company, being duly sworn, depose and say, and each for himself says, that they are the above-described officers of the said company, and that on the thirty-first day of December last all of the above-described assets were the absolute property of the said company, free and clear from any liens or claims thereon, except as above stated, and that the foregoing statement, with the schedules and explanations hereto annexed and by them subscribed, are a true, full, and correct statement of the condition and affairs of the said company on the thirty-first day of December last and for the year ending on that day, according to the best of their information, knowledge, and belief respectively.

(Signed) H. L. STEWART,
President.

(Signed) C. D. HOOKER,
Secretary.

[COMPANY'S SEAL.]

Subscribed and sworn before me this 10th day of January, 1871.

[NOTARIAL SEAL.] (Signed) HENRY WISNER,
Notary Public.

SCHEDULE B.

34 *Containing a description of all the bonds and mortgages owned by the Great Western Insurance Company on the 31st day of December, 1870, the amount of principal unpaid thereon, with the company's valuation of the mortgaged premises, the amount for which the company hold fire-insurance policies on the buildings as collateral security, and the location and dimensions of the land, with the size and description of the buildings.*

	No.	Names of mortgagors.	Date of mortgage.	Mortgages received. In county of—	Rate of interest.	Page.	Amount of principal unpaid.	Valuation of premises in buildings.	Amount of insurance held by company on building.	Location, street, and number.	Quantity or dimensions of land, and size and description of buildings.
	846	26	H. L. Stewart	June 1, 1870	Cook	124	372	40,000 00	63,000 00		Sec. 1, R. 13, T. 39	20 acres, S. Chicago.
	124	79	Abner Peck	Apl. 24, "	Knox	12	479	14,000 00	22,000 00	6,000 00	Sec. 2, R. 3, T. 12	160 " Knox Co., Ill.
	841	68	J. M. W. Jones	May 1, "	Cook	127	380	15,000 00	25,000 00		Sec. 17, R. 14, T. 40	Blks 25 & 26, Chicago.
	838	51	A. R. Waterman	May 1, "	"	124	369	2,000 00	3,000 00		Blk 25, lot 5	W. Chicago.
			A. C. Chamberlain	Apl. 21, "	Winnebago	23	382	2,000 00	4,000 00		Sec. 22, R. 1, T. 41	Lots 1, 2, 3, 4, 5, 6, 8.
	839	66	Horton H. Peck	Mar. 22, "	Cook	124	383	2,000 00	3,000 00		Sec. 6, R. 14, T. 39	Lots 6, 9, 2, 3, 13
	833	57	H. Eugene Caldwell	Apl. 14, "	"	145	384	2,000 00	3,000 00		Sec. 6, R. 14, T. 39	Blk 182, lots 7, 1, 2, 12.
	839	65	Daniel L. Waters	Mar. 16, "	"	124	385	1,000 00	2,000 00		Sec. 6, R. 14, T. 39	Lots 10, 11, 11, Chicago.
	839	69	A. N. Waterman	Apl. 23, "	"	145	386	2,000 00	4,000 00		Sec. 6, R. 14, T. 39	Lots 4, 12, 13, 14. "
	39	31	C. D. Hooker	Apl. 21, "	Lake	24	387	1,000 00	2,000 00		Blk 23	Lot 4, Highland Park.
	846	27	H. F. Peck	June 1, "	Cook	124	388				Sec. 6, R. 14, T. 39	Lot 7, W. Chicago.
	846	10	H. H. Peck	May 23, "	"	124	373	1,000 00	1,000 00		Sec. 6, R. 14, T. 39	Lots 4, 5.
	831	34	O. P. Axtel	June 4, "	"	125	389	10,000 00	20,000 00		Sec. 14 & 15, R. 14, T. 39	240 acres.
	818	63	M. Smith	May 9, "	"	124	367	14,000 00	15,000 00		Sec. 12, R. 13, T. 39	40 acres.
	843	63	A. S. Peck	June 2, "	"	124	385	10,000 00	20,000 00		Sec. 17 & 18, R. 14, T. 13	Blk 14, 20 lots.
	39	34	D. J. Woodward	June 6, "	Lake	24	370	1,000 00	2,000 00		Blk 23	Lot 23.
35		45	S. C. Chamberlain	Nov. 12, "	Winnebago	23	390	2,000 00	4,000 00		Sec. 14, R. 4, T. 39	160 acres.
	839	35	James Montgomery	Oct. 16, "	Cook	124	380	25,000 00	45,000 00		Sec. 15, R. 14, T. 39	Blk. 2, S. Chicago.
	703	29	J. D. Woodward	Nov. 25, "	"	140	391	14,000 00	20,000 00	6,000 00	Lot 225, blk. 12	Riverside.
	729	29	J. D. Woodward	Nov. 25, "	"	140	392		1,000 00		Sec. 8, R. 14, T. 39	Blk. 1, lot 28.
	729	73	J. D. Woodward	Nov. 15, "	"	124	393	2,000 00	4,000 00		Sec. 8, R. 14, T. 39	Blk. 8, lot 14.
	770	39	Mary C. Sanger	Dec. 16, "	"	125	394	10,000 00	20,000 00		Sec. 28, R. 14, T. 41	10 acres.
			J. W. Ellis	Aug. 27, "	Davis Co., Ia.	4	395	2,000 00	3,000 00		Pt. S. E. ¼ sec. 36, R. 70,	T. 16, S. R. ¼ of S. R. ¼, S. 16, 70, 14.
			J. B. Gibson	" "	" "	"	396	2,000 00	4,000 00		Lot 3, blk. 20	Bloomfield, Ia.
			Daniel Hardy	" "	" "	"	397	1,000 00	2,000 00		E. ½ of S. W. ¼ sec. 20	80, 13.
			R. S. Hardy	" "	" "	"	398	2,000 00	3,000 00		W. ½ of S. W. ¼ sec. 20	80, 13.
			George DeBold	" "	" "	"	399	2,000 00	3,000 00		Lot 3, blk. 15	Bloomfield, Ia.
			W. G. Davis	" "	" "	"	400	2,000 00	3,000 00		E. ½ S. W. ¼, S. 5, 68	13.
			Amos Bush	" "	" "	"	401	1,000 00	2,000 00		Pt. N. E. ¼, S. 4, 67, 13	and S. W. ¼ of S. W. 33, 68, 13.
			J. R. Hunter	" "	" "	"	402	1,000 00	2,000 00		Lot 7, blk. 16	Bloomfield, Iowa.
			Thos. Davis	" "	" "	"	403	2,000 00	4,000 00		E. ½ S. W. ¼, S. 5	T. 68, R. 13. 80 acres.
			A. H. Putnam	" "	" "	"	819	2,000 00	3,000 00		S. ½ S. E. ¼, sec. 27	68, 14, and N. ½ N. E. ¼, sec. 33, 68, 14.

	Wm. Hill	"	"	"	"	"						
	T. H. Fenton	"	"	"	"	"						
	John H. Johnson	"	"	"	"	"						
	J. H. Thompson	"	"	"	"	"						
	Henry Hamilton	Nov. 2,	"	Clay Co., Ia.	"	"						
	A. A. Jackson	Nov. 2,	"	"	"	"						
	Gil Nelson	Nov. 2,	"	"	"	"						
	T. E. Carter	Nov. 24,	"	Childress	"	"						

(Signed) O. D. HOUSER, *Secretary.*

(Signed) E. S. STEWART, *President.*

36 And also the license issued to the company to do business, which is in the words and figures following, to wit:

LICENSE.

AUDITOR'S OFFICE, ILLINOIS,
Bureau of Insurance:

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the annexed is a true and correct copy of a certificate of authority issued by me to J. W. Adgate, of Jacksonville, to transact business for the Great Western Insurance Company of Chicago, Illinois, as shown by the records of my office.

{ SEAL OF AUDITOR'S OFFICE. } In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, this 22d day of November, A. D. 1872.

C. E. LIPPINCOTT,
Auditor P. A.

STATE OF ILLINOIS,
Auditor's Office, Insurance Department:

SPRINGFIELD, *August* 31, 1870.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that there has been filed in this office a sworn statement showing the condition of the Great Western Insurance Company, located at Chicago, in the State of Illinois, on the 25th day of August, A. D. 1870, in accordance with the provisions of an act of the general assembly of the State of Illinois to incorporate and to govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois, approved March 11, 1869, and said statement shows that said company is possessed of the requisite amount of capital invested as required by law. Authority is therefore given to the above-named company to transact its appropriate business of fire-insurance in this State, in accordance with the laws thereof, until the 31st day of January, A. D. 1871.

I further certify that J. W. Adgate, of Jacksonville, is hereby authorize' as an agent to transact business, according to law, for said company.

37 In testimony whereof I have hereunto set my hand and affixed my seal of office, at Springfield, the day and year [AUDITOR'S SEAL.] above written.

(Signed) C. E. LIPPINCOTT,
Auditor of Public Accounts.

And also the report of the examination by said auditor of the affairs of said company; which is in the words and figures following, to wit:

REPORT OF EXAMINATION.

AUDITOR'S OFFICE, ILLINOIS,
Bureau of Insurance:

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that on the twenty-seventh day of January, A. D. 1871, I made an examination of the affairs of the Great Western Insurance Company of Chicago, Illinois, by Lotus Niles, esq., my agent, duly appointed by me, in conformity to law, and that the annexed is a

true and correct copy of the report of said Lotus Niles concerning said examination.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, this 19th day of November, A. D. 1872.

{ SEAL OF AUDITOR'S OFFICE. }

C. E. LIPPINCOTT,
Auditor P. A.

STATE OF ILLINOIS,
Auditor's Office, Department of Insurance.

SPRINGFIELD, *Jan. 19th*, 1871.

To LOTUS NILES, Esq., *Springfield:*

SIR: In pursuance of the provisions of the act of the general assembly of the State of Illinois entitled "An act to incorporate and to govern fire, marine, and inland navigation insurance companies doing business in the State of Illinois," approved March 26th, 1869, you are hereby appointed and authorize' to examine the capital, securities, and affairs of the Great Western Fire-Insurance Company of Chicago, in the State of Illinois, and make report to me, under your own oath and the
38 oaths of the president and secretary of said company, according to the forms annexed to this appointment.

In testimony whereof I hereunto subscribe my name and affix my seal of office the day and year first above written.

[AUDITOR'S SEAL.] (Signed) C. E. LIPPINCOTT,
Auditor of Public Accounts.

To the Hon. C. E. Lippincott, auditor of public accounts of the State of Illinois:

The undersigned, in pursuance of the appointment hereto annexed, bearing date the 19th day of January, A. D. 1871, has personally made an examination of the capital, securities, and affairs of the Great Western Insurance Company of the city of Chicago, in the State of Illinois, an insurance company claiming to have complied with all the requirements of said act, and hereby certifies that the capital of said company, as fixed by its charter, is thousand dollars, of which there has been two hundred twenty-two thousand eight hundred thirty one $\frac{42}{100}$ ($222,831.42) dollars paid in, and is now possessed by said company in money, or in the stocks, bonds, and mortgages required by said act aforesaid, as part of the assets of the company, as shown in Schedule A, hereunto annexed, and the statement of the affairs of the company, as sworn to by the president and the secretary of the company, and attached hereto, and marked "Schedule B," has been carefully compared by me with the books, vouchers, and papers of the company, as now on file in the company's office, and I find said statement in every particular to be correct, except as modified or changed in Schedule' A, B, hereto attached, and the officers of said company have furnished me satisfactory evidence that the company, in its own right, is possessed of all the assets and property as claimed in said statement, except the changes noted in Schedule A hereof.

In testimony whereof I hereto subscribe my name this 27th day of January, A. D. 1871.

(Signed) LOTUS NILES.

STATE OF ILLINOIS, *County:*

39 I, Lotus Niles, do solemnly swear that the foregoing report, subscribed by me, is true in every particular, to the best of my knowledge, information, and belief.

(Signed) LOTUS NILES.

Sworn to before me and subscribed in my presence by the above-named Lotus Niles, this 27th day of January, A. D. 1871.

Given under my hand and official seal.

[NOTARIAL SEAL.] (Signed) RUSSELL J. WATERS,
Notary Public.

STATE OF ILLINOIS,
County of Cook, ss:

Russell J. Waters and Chester D. Hooker do solemnly swear that said Russell J. Waters is the vice-president and said Chester D. Hooker is the secretary of The Great Western Insurance Company, above named; that said company is organized in good faith, for the purpose of transacting the business of fire-insurance at Chicago, in the State of Illinois; that the securities and property exhibited by them as the assets of said company to the above-named Lotus Niles (who was appointed by the auditor to examine the same) are truly set forth and specified in Schedule A, hereto annexed, and are bona fide the property of and now owned and possessed by said company in its corporate capacity; that no part of said assets has been withdrawn, pledged, or in any manner impaired, nor loaned, or advanced to said company, for the purpose of being exhibited as part of its assets.

(Signed) RUSSELL J. WATERS, *Vice-Pres't.*
(Signed) C. D. HOOKER, *Secretary.*

Sworn to by the said Russell J. Waters and Chester D. Hooker before me, and subscribed to by them in my presence, this 27th day of January, A. D. 1871.

(Signed) LOTUS NILES.

Schedule A.—Containing a particular description of all the actual assets owned by the Great Western Fire-Insurance Company on the 31st day of December, 1870.

		Dollars.	Cts.
	Amount of cash on hand in the company's office, as shown by the company's books.....	428	97
40	Amount of cash deposited in the Third National Bank of Chicago, verified by the books of the bank	4,874	50
	Amount of cash in hands of agents and in course of transmission; this is the balance due of agents' accounts since Oct., 1870, the largest portion of which is of the month of Dec., 1870, and is probably good.....	35,800	55
	Loans on bonds and mortgages on which less than one year's interest is due, duly recorded and being first liens on the fee-simple, as per Schedule B. The amount of said loans on real estate lying in the State of Illinois is (and evidence of record and value was exhibited, and in the case of all taken since previous examination, abstracts of title were furnished) the sworn statement of J. T. Foster and Geo. W. Parker, freeholder' of Chicago, verified the value placed on No. 77099 of the schedule. The statement of Harlan H. Peck was received as to the value of No'. 73889 and 73275. Affidavits were furnished as to the balance of the property. The amount of said loans on real estate lying in the State of Iowa is $21,075.00. The usual evidences of record is endorsed on the mortgages, and a sworn statement of three citizens of		

	Iowa was furnished as to the value of the land lying in Davis Co. Statement was furnished, but not under oath, as to the lands in Clayton and Chickasaw Counties. No abstracts of title or certificates thereof were furnished. I called the attention of the co. to sec. 8 of the insurance law, which in effect prohibits loans on real estate lying out of this State. I have not thought it best, from the foregoing facts, to extend this amount.....	162,100 00
2	Chicago West Side City Park bonds, 8 per cent., No. 154, $200, and 156, $100.....	300 00
41	9 Chicago N. W. R. R. land-certificates, No. 490, $480; 513, $1,920; 520, $1,920; 512, $960; 503, $960; 507, $960; 510, $960; 495, $480; 499, $480..	4,530 00
	Amount of interest on notes for premium not due.... ..	583 91
	Interest accrued but not due on bonds and mortgages, (including interest on the Iowa mortgages).....	10,345 25
	Bills receivable held by the company, considered good, viz, stock-notes drawing no interest	7,495 00
	Notes for premiums, mostly for current business in 1870..	8,526 13
	Amount of United States internal-revenue stamps on hand.	51 25
	Amount of all other property belonging to the company, consisting of the following items: Office-furniture, $1,569.47.	1,569 47
	Horse, buggy, and outfit.....	650 00
	Charter expenses, $2,000.00 This item I do not value.	
	Amount due from "city collections" for commissions, brokerage, money loaned, stock, etc., being ledger-balances.	11,503 83
		$248,829 86

NOTE A.—The "gross amount of cash actually received during the year for premiums" includes the amount in the hands of agents in the course of transmission.

NOTE B.—"Amount paid during the year for salaries, fees, and all charges of officers and directors of the company" includes the salaries of general agents.

NOTE C.—Amount paid during the year for national taxes and dues includes the amount paid for stamps, taxes, $327.06; rev. stamps, $1,171.63.

NOTE D.—"General expenses, supplies, and advertising" embraces the following items, viz: Stock 'count, $7,967.10; advertising,
42 $950.91; charter, $2,000; supplies, $4,917.50; interest, $1,172.83; foreign exp. and , $5,272.53; city expenses, $3,527.97; office-furniture and fixtures, $2,219.47; sundry expenses not included in the foregoing, $5,592.89; profit and loss, $3,750.

(Signed) LOTUS NILES.

(Indorsed:) Filed February 27th, 1871. Signed C. E. Lippincott, auditor of public accounts.

To all which documents defendant then and there objected as immaterial; which objection were overruled by said court and said documents read in evidence. To *said* which defendant then and there excepted.

And that the plaintiff also offered in evidence the deed to said assignee; which is in the words and figures following, to wit:

Deed to assignee.

In the district court of the United States for the northern district of Illinois.

IN THE MATTER OF THE GREAT WESTERN Insurance Company, bankrupt. } In bankruptcy.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents, that Clark W. Upton, of Chicago, in the county of Cook and State of Illinois, in said district, has been duly appointed assignee in said matter. Now, therefore, I, Homer N. Hibbard, one of the registers of said court in bankruptcy, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said Clark W. Upton, assignee as aforesaid, all the estate, real and personal, of the said the Great Western Insurance Company of Chicago, bankrupt aforesaid, including all the property, of whatever kind, of which he is possessed or in which he was interested or entitled, to have, on the sixth day of February, A. D. 1872, with all his
43 deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said 14th section of said act: To have and to hold all the foregoing premises to said Clark W. Upton and his heirs forever; in trust, nevertheless, for the uses and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

In witness whereof I, the said register, have hereunto set my hand and caused the seal of said court to be affixed this eleventh day of April, A. D. 1872.

[SEAL OF THE COURT.]

H. N. HIBBARD,
Register in Bankruptcy.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, Homer N. Hibbard, a register in bankruptcy in and for the said district, do hereby certify the foregoing to be a true copy of the deed of assignment of the estate and effects of said bankrupt in the matter of the Great Western Insurance Company of Chicago, bankrupt.

Dated this 25th day of September, A. D. 1872.

H. N. HIBBARD,
Register in Bankruptcy.

And that said plaintiff introduced evidence tending to show that in the summer of 1871 one David Myers assigned twenty-five shares of the stock of said company to defendant as collateral security, on which twenty per cent. had been paid, and that prior to the fire of October 9th, 1871, defendant caused said shares of stock to be transferred on the books of said company to himself.

And that said defendant introduced testimony tending to show that said transfer of stock was made on the evening of Saturday, October 7th, 1871, and that Hart L. Stewart, the president of said company, knew

that defendant took and held said stock as collateral security for a loan of $1,800 made by him to said Myers. No other contract than the one above alleged was shown to have been made between said company and said defendant.

And that said plaintiff offered in evidence the order of the district court making a call or assessment upon the stockholders of said company for the unpaid portion thereof, which order was entered on the 5th day of July, 1872, and is as follows, to wit:

44 *Order for payment of stock.*

"IN THE MATTER OF THE GREAT WESTERN Insurance Company, bankrupt. } In bankruptcy.

"And now, on this day, comes C. W. Upton, assignee of the estate of said bankrupt, and makes application to this court showing that a large amount of the capital stock of the said bankrupt remains unpaid in part; that the whole amount of such capital stock will be required to be paid in order to meet the demands now due from and proven against the estate of said bankrupt; and upon investigation of the facts in the matter, and the court being fully advised in the premises, it is ordered that the entire amount of the capital stock of said bankrupt be paid to said assignee on or before the 15th day of August, A. D. 1872, at his office in Chicago, Illinois; and in default thereof, that said assignee proceed to collect the same. It is further ordered that notice of this call be given to the stockholders of said bankrupt, so far as known, without unreasonable delay, by publication or otherwise."

To the introduction of which the defendant objected, on the ground that it did not appear that any personal notice was given to any of the stockholders of said company, or to this defendant, of any application for such order or any hearing of the same by said court; and defendant offered to show that he received no notice of any intention of making such application; that no notice thereof was ever served upon him, and that it was unnecessary to make so large an assessment; that an assessment of a much smaller sum would have been sufficient to pay the losses of said company; which objection and offers were overruled and rejected by said court, and said order read in evidence; to all of which said defendant then and there excepted.

No evidence was offered tending to show that the directors of said company had made any call for the payment of any portion of said stock under the direction of the stockholders, or that the stockholders, or any majority of them represented at any regular meeting, had ever
45 instructed the directors to make such a call as was required by conditions contained in said certificates of stock.

And that said plaintiff introduced evidence to show that the following was the form of stock certificate issued to Meyers and transferred to Pullman:

THE GREAT WESTERN INSURANCE COMPANY.

"Capital stock $500,000 with liberty to increase to 5,000,000 dollars.

"(Number.) (Shares.)

"Organized July 20th, 1857, under act of legislature approved March 4th, 1857.

"This is to certify that is entitled to shares in the

capital stock of the Great Western Insurance Co. of Chicago, Ill., of one hundred dollars each, of which twenty per cent. is payable as follows: Five per cent. on receipt of stock certificate; five per cent. in three months from date hereof; five per cent. in six months from date thereof; five per cent. in nine months from date; transferrable only on the books of the company, in person or by attorney, on the surrendering of this certificate, being subject to the charter and by-laws of said corporation and laws of the State of Illinois. Dated at Chicago, this day , of in the year of our Lord one thousand eight hundred and .

"$100.] , *Secretary.* , *President.*"

[Stamp.]

[The bill of exceptions in this case may be amended as above.
BOUTELL & WATERMAN.]

And that the plaintiff also offered in evidence the notice sent to stockholders, which is as follows:

Notice to stockholders.

OFFICE OF THE ASSIGNEE OF THE
GREAT WESTERN INSURANCE COMPANY,
163 *East Washington st., Chicago, July 8th*, 1872.

To :

You are hereby notified that on petition filed, and proofs heard, in the matter of the Great Western Insurance Company, a bankrupt, in the district court of the United States for the northern district of Illinois, the following order was made and entered of record in said court on the fifth day of July, 1872, viz:

IN THE MATTER OF THE GREAT WESTERN Insurance Company, bankrupt. } In bankruptcy.

And now on this day comes C. W. Upton, assignee of the estate of said bankrupt, and makes application to this court, showing that a large amount of the capital stock of the said bankrupt remains unpaid in part; that the whole amount of such capital stock will be required to be paid in order to meet the demands now due from and proven against the estate of said bankrupt; and upon investigation of the facts in the matter, and the court being fully advised in the premises, it is ordered that the entire amount unpaid on the capital stock of the said bankrupt be paid to said assignee on or before the 15th day of August, A. D. 1872, at his office in Chicago, Illinois, and in default thereof that said assignee proceed to collect the same. It is further ordered that notice of this call be given to the stockholders of said bankrupt so far as known, without unreasonable delay, by publication or otherwise.

The holders of the unpaid capital stock in said bankrupt cor-
46 poration will please take notice, and govern themselves accordingly.

Under the order of said court, and the action of the officers of said company prior to bankruptcy, per cent. of the stock held by you, now standing on the books of said bankrupt, is long past due. The balance, by the order of said court, will become due August 15th, 1872. By a prompt remittance of the amount now due, costs will be avoided.

Respectfully,

C. W. UPTON, *Assignee.*

[illegible] and by [illegible] prior to [illegible] and of general [illegible] in said [illegible] the [illegible] cause was [illegible] defendant [illegible] said [illegible]

That defendant, at the [illegible] of plaintiff's testimony, moved to exclude all the testimony of the plaintiff upon the ground that no sufficient cause in law was made against said defendant under the declaration in said cause; which motion was overruled by said court, to which defendant then and there excepted.

That thereupon said court found the issues for said plaintiff, whereupon said defendant moved for a new trial in said cause, which motion was overruled by said court, to which said defendant then and there excepted. And thereupon said court rendered judgment in said cause for said plaintiff, to which said defendant then and there excepted.

And inasmuch as the foregoing matters do not appear of record in this cause, said defendant prays that this his bill of exceptions in said cause may be signed and sealed and made a part of the record in said cause, and it is done accordingly.

H. W. BLODGETT, *Judge.* [SEAL.]

(Indorsed:) Filed July 28th, 1874. Wm. H. Bradley, clerk.

47 Afterwards, to wit, on the 8th day of August, A. D. 1874, said defendant, by his attorneys, filed in said clerk's office his bond in said entitled cause; which said bond is in the words and figures following, to wit:

Supersedeas-bond.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company, a bankrupt, vs. ALBERT B. PULLMAN. } Assumpsit.

Know all men by these presents that we, Albert B. Pullman and James McK. Sanger, of Chicago, Cook County, Illinois, are held and firmly bound unto Clark W. Upton, as assignee in bankruptcy of the Great Western Insurance Company, a bankrupt, in the sum of thirty-five hundred dollars, to be paid to said Clark W. Upton as such assignee, or his successor in office, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated this 7th day of August, 1874.

The condition of the above obligation is such that whereas said Clark W. Upton, as such assignee, did, on the 28th day of July, 1874, in the district court of the United States for the northern district of Illinois, recover a judgment against said Albert B. Pullman, in the above-entitled cause, for the sum of twenty-two hundred and thirty-four dol-

lars besides costs of suit, from which said judgment of said district court said Albert B. Pullman has prayed for and obtained a writ of error to the circuit court of the United States for the northern district of Illinois:

Now, therefore, if the said Albert B. Pullman shall duly prosecute his said writ of error with effect, and moreover pay the amount of said judgment, interest, costs, and damages in case the said judgment
48 shall be affirmed in said circuit court, then the above obligation to be void; otherwise to remain in full force and virtue.

ALBERT B. PULLMAN. [SEAL.]
J. McK. SANGER. [SEAL.]

Approved:

H. W. BLODGETT,
Dist. Judge.

(Indorsed:) Filed August 8th, 1874. Wm. H. Bradley, clerk.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the district court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings had in said court in said entitled cause, wherein said Clark W. Upton, assignee, etc., is plaintiff, and said Albert B. Pullman defendant, as the same appears of record remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said district court, at Chicago, in said district, this tenth day of August, A. D. 1874, and of our Independence the 99th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the honorable the judge of the district court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of the judgment in a plea which is in the said district court before you, between Clark W. Upton, assignee of the Great Western Insurance Company, a bankrupt, plaintiff, and Albert B. Pullman, defendant, a manifest error hath happened, to the great damage of said Al-
49 bert B. Pullman, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf:

You are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the northern district of Illinois, together with this writ, so that you have the same at Chicago, in said district, on the first Monday of October next, in the said circuit court to be then and there held, that, the record and proceedings being inspected, the said circuit court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Su-

preme Court of the United States, this thirteenth day of July, A. D. 1874, and of our Independence the ninety-ninth year.

[SEAL.] WM. H. BRADLEY,
Clerk of Circuit Court of the United States for Northern District of Illinois.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, a bankrupt, greeting:

You are hereby cited and admonished to be and appear at a circuit court of the United States for the northern district of Illinois, to be holden at Chicago, in said district, on the first Monday of October, 1874, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Albert B. Pullman is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

50 Witness the honorable Henry W. Blodgett, judge of the said district court, this 8th day of August, 1874, and of the Independence of the United States the 98th year.

H. W. BLODGETT, *Judge.*

I hereby accept service of above citation this 8th day of August, 1874.

C. W. UPTON,
Assignee, etc.

(Endorsed:) Filed Oct. 16th, 1874. Wm. H. Bradley, clerk.

51 Afterwards, to wit, on the twentieth day of February, A. D. 1875, in the December term, A. D. 1874, of said circuit court, in the record of the proceedings thereof, before the Hon. Thomas Drummond, judge, appears the following entry in said entitled cause, to wit:

Judgment.

ALBERT B. PULLMAN *vs.* CLARK W. UPTON, ASSIGNEE OF THE GREAT WESTERN INSURANCE COMPANY, a bankrupt.	In error from district court.

This cause having been heretofore submitted to the court upon the record from the district court and the arguments of counsel, and taken under advisement, and the court having considered, and being now fully advised upon the matters herein, affirms the decree of the district court herein with costs.

52 And it appearing to the court from said record that the said Clark W. Upton, assignee, &c., the defendant in error, did, on the twenty-eighth day of July, A. D. eighteen hundred and seventy-four, recover in the district court of the United States for the northern district of Illinois a judgment against the said Albert B. Pullman, the plaintiff in error, for the sum of two thousand two hundred and thirty-four dol-

lars for his damages, and the sum of thirty-seven dollars and ninety cents for his costs—

It is thereupon considered and adjudged by the court that the said Clark W. Upton, assignee of the Great Western Insurance Company, a bankrupt, the defendant in error, have and recover of the said Albert B. Pullman, the plaintiff in error, the said sum of two thousand two hundred and thirty-four dollars, his damages, and the sum of seventy-six dollars and forty-seven cents, the interest upon said judgment to date, making the sum of twenty-three hundred and ten dollars
53 and forty-seven cents for damages and interest; also, the sum of thirty-seven dollars and ninety cents, the costs in the district court, together with his costs and charges in this behalf expended, amounting to the sum of eighty-six dollars and cents, and that he have execution therefor.

Afterwards, to wit, on the first day of April, A. D. 1875, said Albert B. Pullman filed in said clerk's office of said circuit court his bond in said entitled cause; which said bond is in the words and figures following, to wit:

Supersedeas bond.

Know all men by these presents that we, Albert B. Pullman, of Chicago, Cook County, Illinois, and James McK. Sanger, of said Chicago, are held and firmly bound unto Clark W. Upton, as assignee in bankruptcy of the Great Western Insurance Company, of Cook County,
54 Illinois, in the penal sum of four thousand dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, executors, and administrators, jointly, severally, and firmly, by these presents. Witness our hands and seals this 31st day of March, 1875.

The condition of this bond is such that whereas the said Clark W. Upton, as such assignee, did, on the 28th day of July, 1874, in the district court of the United States for the northern district of Illinois, recover a judgment against the above bounden Albert B. Pullman for the sum of twenty-two hundred and thirty-four dollars besides costs of suit, from which judgment of said district court said Albert B. Pullman duly obtained a writ of error to the circuit court of the United States for said district; and whereas said circuit court did, on
55 the 23d day of February, 1875, render a judgment duly affirming said judgment of said district court in all things, and from which judgment of said circuit court said Albert B. Pullman has prayed for and obtained a writ of error to the Supreme Court of the United States:

Now, therefore, if the said Albert B. Pullman shall duly prosecute his said writ of error to said Supreme Court with effect, and, moreover, pay the amount of the judgment, costs, interest, and damages rendered and to be rendered against him, in case said judgement shall be affirmed in said Supreme Court, then the above obligation shall be void; otherwise remain in full force and virtue.

A. B. PULLMAN, [SEAL.]
Per E. A. PULLMAN. [SEAL.]
J. McK. SANGER. [SEAL.]

Approved.

THOMAS DRUMMOND, *Judge.*

(Endorsed:) Filed April 1st, A. D. 1875. Wm. H. Bradley, clerk.

56 Afterwards, to wit, on the 22d day of April, A. D. 1875, the parties, by their attorneys, filed in said clerk's office a stipulation in said entitled cause; which stipulation is in words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court of United States for northern district of Illinois.

ALBERT B. PULLMAN vs. CLARK W. UPTON, ASSIGNEE, &c. } Writ of error to U. S. district court N. D. of Ill.

WASHINGTON LIBERTY vs. CLARK W. UPTON, ASSIGNEE, &c. } Writ of error to U. S. district court N. D. of Ills.

It is hereby stipulated and agreed that the clerk of said court may file the assignment of errors in each of above causes, nunc pro
57 tunc, as of January 20th, 1875.

MONROE, BISBEE & GIBBS,
Attys. for Plf. in Error.
BOUTELL & WATERMAN,
Attys. for Deft. in Error.

(Endorsed:) Filed April 22d, 1875. Wm. H. Bradley, clerk.

On the same day, to wit, April 22d, A. D. 1875, said Albert B. Pullman, by his attorneys, filed in said clerk's office his assignment of errors in said entitled ; which said assignment of errors is in words and figures following, to wit:

Assignment of errors.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States in and for said district.

58 ALBERT B. PULLMAN, PLAINTIFF IN error, vs. CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company, a bankrupt, defendant in error.

And now comes said Albert B. Pullman, by Monroe, Bisbee & Gibbs, his attorneys, and assigns the following errors in the record and proceedings aforesaid of said district court, to wit:

1st. Said court erred in admitting in evidence the pamphlet and charter of said company.

2d. Said court erred in admitting in evidence the certified copy of proceedings for increase of capital stock of said company.

3d. Said court erred in admitting in evidence the certified copy of the amended charter of said company, and the certified copy of the
59 report of said company dated December, 1870, and the license of said company to do business, and the auditor's report of the examination of the affairs of said company.

4th. The said court erred in admitting in evidence the order of said district court (in bankruptcy) making an assessment on the stock of said company.

5th. The said court erred in admitting in evidence the notice of assessment upon said stock.

6th. Said court erred in overruling the motion of plaintiff in error to exclude all the testimony of defendant in error.

7th. Said court erred in overruling said motion for a new trial.

8th. Said court erred in rendering judgment therein.

And plaintiff in error prays that said judgment may be reversed.

60 MONROE, BISBEE, & GIBBS,
Attys. for Plaintiff in Error.

(Endorsed:) Filed April 22d, 1875. Nunc pro tunc, as of the 20th January, 1875, by agreement of parties. Wm. H. Bradley, clerk.

61 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript of the record of all the proceedings in said court had in said entitled cause, wherein said Albert B. Pullman is plaintiff in error, and said Clark W. Upton, assignee, &c., is defendant in error, as appears from the records of said court remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Chicago, in said district, this 23d day of April, A. D. 1875.

[SEAL.] WM. H. BRADLEY, *Clerk.*

62 UNITED STATES OF AMERICA, *ss:*

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment which is in the said court before you, between Albert B. Pullman, plaintiff in error, and Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, a bankrupt, defendant in error, a manifest error hath happened, to the great damage of the said Albert B. Pullman, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf: you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in October next, in the said Supreme Court to be then and there held, that, the record and proceedings
63 being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme

Court of the United States, this [illegible] day of [illegible] of our Independence the ninety-ninth year.

[SEAL.] WM. H. BRADLEY,
Clerk of Circuit Court U. S., Northern District of Illinois.

(Indorsed:) Pullman vs. Upton, assignee, &c. Writ of error.

64 The United States of America to Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday in October, 1874, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Washington Libbey is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the judge of the said circuit court this 21 day of April, A. D. 1875.

THOMAS DRUMMOND.

Service accepted, April 21, '75.

BOUTELL & WATERMAN,
Attys. for Upton.

(Indorsed:) Sup. Court U. S., 1875, Octo. term. No. 753. A. B. Pullman vs. C. W. Upton, assignee. Writ of error. Filed 27 October, 1875. Libbey vs. Upton, assignee, &c. Citation.

65 Supreme Court of the United States, October term, 1875.

ALBERT B. PULLMAN, PLAINTIFF IN ERROR, *vs.* CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY of the Great Western Insurance Company, defendant in error,	Writ of error to the circuit court of the United States for the northern district of Illinois.

Assignment of errors.

And now comes said Albert B. Pullman, plaintiff in error, by Monroe & Bisbee, his attorneys, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

66 I. Said district court erred in admitting in evidence the pamphlet copy of the charter of said company.

II. Said district court erred in admitting in evidence the certified copy of the proceedings for increase of the capital stock of said company.

III. Said district court erred in admitting in evidence the certified copy of the amended charter of said company, and the certified copy of the report of said company dated December, 1870, and the license of said company to do business, and the auditor's report of the examination of the affairs of said company.

67 IV. Said district court erred in admitting in evidence the order of said district court (in bankruptcy) making an assessment on the stock of said company.

V. Said district court erred in admitting in evidence the notice of assessment upon said stock.

VI. Said district court erred in overruling the motion of plaintiff in error to exclude all the testimony of defendant in error.

VII. Said district court erred in overruling said motion for a new trial, and rendering judgment in said cause.

68 VIII. Said circuit court erred in affirming said judgment of said district court.

Wherefore said plaintiff in error prays that said judgment may be reversed, and that such further proceedings may be had in said cause as shall be agreeable to law and justice.

MONROE & BISBEE,
Attys. for Plff. in Error.

(Indorsement on cover:) No. 753. Albert B. Pullman, plaintiff in error, vs. Clark W. Upton, assignee in bankruptcy of the Great Western Insurance Co. N. Illinois C. C. U. S. Filed 18th October, 1875.

Supreme Court of the United States.

October Term, 1874.

ALBERT B. PULLMAN,
Plaintiff in Error,
vs.
CLARK W. UPTON, Assignee, etc.,
Defendant in Error.

Brief and Argument

[redacted]

[redacted]

Attorneys for Plaintiff in Error.

Chicago:
Rand, McNally & Co., Printers, 148 & 150 Monroe Street.
1874.

Supreme Court of the United States.

No. 256.

ALBERT B. PULLMAN,
PLAINTIFF IN ERROR,
vs.
CLARK W. UPTON, ASSIGNEE, ETC.,
DEFENDANT IN ERROR.

In error to the United States Circuit Court for Northern District of Illinois.

CASE STATED.

David Myers owned twenty-five shares of stock in the Great Western Insurance Company of Chicago. Some time in the Summer of 1871, he borrowed of the plaintiff in error $180 in money, and to secure the payment of the same, handed his certificate of stock to this plaintiff, who kept it in his possession until the evening of October 7, 1871, at which time, and at the request of the officers of the insurance company, he surrendered the old certificate, and took from said company a new one for the same number of shares.

On the 8th of October, 1871, the great fire broke out in Chicago, and consumed a portion of the city, one result of which was to bankrupt said insurance company.

The last official act this insurance company ever did was to accept of the transfer of the stock in question.

Hart L. Stewart, the president of said company, knew just how the plaintiff in error held this stock.

Nothing appeared upon the face of the stock to show that it had not been paid in full; on the contrary, it was marked "Non-assessable."

No knowledge or information was given this plaintiff in error that there was any liablility upon said stock, or that it had not been paid in full; on the contrary, it bore the evidence upon its face of being full paid stock and strictly *non-assessable* for any purpose.

There is no pretense that the plaintiff in error held the new certificate in any other capacity than as collateral to a small loan to said David Myers.

Not a policy of insurance was ever issued by said company after the above named transaction. Not a dollar of liability was ever after incurred. Nor does it appear that the plaintiff in error ever participated in the management of said company, or had any knowledge whatever of its condition—of the amount of its capital stock and the amount paid in, or the amount of its liabilities and assets.

Neither does the record disclose any evidence that said stock was not paid for in full, except such as appears in the certificate itself. The certificate of stock issued to the plaintiff in error was as follows:

"THE GREAT WESTERN INSURANCE COMPANY.

Capital stock $500,000, with liberty to increase to $5,000,000.

[Number.] [Shares.]

Organized July 20th, 1857, under act of legislature approved March 4th, 1857.

This is to certify that is entitled to shares in the capital stock of the Great Western Insurance Company of Chicago, Illinois, of one hundred dollars each, of which twenty per cent. is payable as follows; Five per

cent. on receipt of stock certificate; five per cent. in three months from date hereof; five per cent. in six months from date hereof; five per cent. in nine months from date; transferable only on the books of the company, in person or by attorney, on the surrendering of this certificate, being subject to the charter and by-laws of said corporation and laws of the State of Illinois. Dated at Chicago, this day of , in the year of our Lord one thousand, eight hundred and .

[$100.]

Non-assessable.

President.

[Stamp.] *Secretary.*"

Said Insurance Company was chartered by the legislature of the State of Illinois in the year 1857. The amount of the losses by reason of said fire do not appear in the record; it was, however, in March 1872, adjudged a bankrupt, and the defendant in error was duly appointed its assignee.

There is nothing in the charter of the company defining the liability of its stockholders, nor is any general statute of the State referred to which fixes that liability.

In June of 1873, the defendant in error brought an action at law in the District Court of the United States for the Northern District of Illinois against the plaintiff in error, to recover the balance alleged to be due upon said stock.

The cause was submitted to, and tried without a jury by the Judge of said District Court.

The defendant in error offered in evidence against the objection of the plaintiff in error, a *pamphlet* copy of the by-laws, prospectus and charter of such Insurance Company, which testimony was admitted by the court against the objection of the plaintiff in error.

Defendant in error further offered the Auditor's certi-

fied copy of the proceedings increasing the capital stock of such Insurance Company; and the same was by the court admitted in evidence against the objection of the plaintiff in error.

The defendant in error also offered in evidence a certified copy of the amended charter of said company, and a certified copy of the report of said company, dated December, 1870, and the license of said company to do business, and the Auditor's report of the examination of the affairs of said company; and notwithstanding the objection of the plaintiff in error, that each and every of said papers were immaterial, the court admitted them.

The defendant in error further offered in evidence an order of said District Court, making an assessment upon the stockholders for eighty per cent of the par value of the stock, which order was entered July 7, 1872.

To the introduction of such order the plaintiff in error objected, and offered to prove that an assignment of a much smaller sum would have been sufficient to pay the losses of the company; which objection and offer were overruled and rejected by the Court.

The defendant in error also offered in evidence a notice of assessment upon said stock, which the testimony tended to show had been mailed to the plaintiff in error, in July of 1872; to the introduction of this notice, the plaintiff in error objected, for the reason that it was not received by him.

ASSIGNMENT OF ERRORS.

I. Said District Court erred in admitting in evidence the pamphlet copy of the charter of said company.

II. Said District Court erred in admitting in evidence the certified copy of the proceedings for increase of the capital stock of said company.

III. Said District Court erred in admitting in evidence the certified copy of the amended charter of said company, and the certified copy of the report of said company, dated December, 1870, and the license of said company to do business, and the auditor's report of the examination of the affairs of said company.

IV. Said District Court erred in admitting in evidence the order of said District Court, (in bankruptcy), making an assessment on the stock of said company.

V. Said District Court erred in admitting in evidence the notice of assessment upon said stock.

VI. Said District Court erred in overruling the motion of plaintiff in error to exclude all the testimony of defendant in error.

VII. Said District Court erred in overruling said motion for a new trial, and rendering judgment in said cause.

VIII. Said Circuit Court erred in affirming said judgment of said District Court.

ARGUMENT.

This is a case which can be justified only upon the ground that the individual hardship must give way to the general application of a just rule. The equities certainly are strongly with the plaintiff in error. The only interest he had in this stock was that it was security for the $180 due to him from Myers. After the transfer upon the books of the company to the plaintiff in error, no business was transacted by the corporation, and no creditor was aware of the fact that such transfer had been made. It must be admitted that prior thereto the plaintiff in error was not legally bound to pay the amount yet due upon this stock to the assignee, or to any one else. But it is asserted that by the transfer of such stock he became liable to pay to the assignee the entire balance of such stock which then remained unpaid. The transfer occurring so late upon the last day that the company did any business, it is true, beyond any cavil, that no creditor changed his relations to the company, or became a creditor of the company upon the faith thereof, or because the plaintiff in error was a stockholder therein.

This court will not, therefore, find the defendant liable, unless by the strict rules of the common law no other judgment is permissible.

I. The pamphlet copy of the by-laws, prospectus, and charter of the insurance company were not authenticated in any way, and in fact were intended only as an advertisement. Hence, upon objection, they were incompetent evidence, it not being shown why the originals were not offered. The principle is elementary that the best accessible evidence must be offered if the opposing party object to the introduction of that which is tendered. No reason was assigned for the introduction of such secondary evi-

dence, and it is not probable that any existed other than the desire of the attorneys for the defendant in error to try their cause in their own way.

II. To the offer of certified copy of the papers on file in the Auditor's office, the plaintiff in error interposed the objection that the names of the stockholders, and of the directors upon the original instrument were forgeries, and that therefore such copy should not be read in evidence without first proving the genuineness of such original.

The court below, without giving the plaintiff in error an opportunity of showing what the facts are in relation to such original, admitted the copy, thus cutting off all chance for the defendant below to prove that no such proceedings were had by the officers and directors of said company as were purported to be evidence by the same.

This point becomes material since the increase of the capital stock of said insurance company from $500,000 to $5,000,000 was proved *solely* by such proceedings from the Auditor's office: and the plaintiff in error is not liable to the assignee of said company, unless such increase of capital stock was lawfully made.

Seymour v. *Sturges*, 26 N. Y., 134.

III. The objection to the order making an assessment upon the stockholders, is, that no personal notice was given to the defendant or any other stockholder that such application would be made to the bankrupt court.

The rights of the plaintiff in error were cut off without his having an opportunity to show that the liabilities of the company were not so great as to render it necessary to call for the whole amount unpaid upon the stock of said company.

The bankrupt court had originally no jurisdiction over the plaintiff in error, and therefore unless he was afterwards personally notified to show cause why this heavy liability should not be fixed upon him; an order of court to that

effect such cause to which he is not a party, must be void as to him.

The assignee stands in the shoes of the bankrupt.

The company could not make an assessment similar to the one offered in evidence, unless by consent of a majority of the stockholders. The making of this assessment by the court without notice to the stockholders to show cause why it should not be entered, is, in law, the entry of a judgment against a party without giving him his day in court; and such judgments, by all the authorities, is void. No notice of this assessment was attempted to be given to the plaintiff in error until some days after the order had been entered, and that notification was simply a call upon him to conform to the terms of such order or assessment.

It cannot be claimed that any contract ever existed between this plaintiff in error and the Great Western Insurance Company for the payment of any money. Nor can it be said that the plaintiff in error ever subscribed for any stock, or ever purchased any stock, or in any way became privy to or cognizant of any form of liability whatever to said insurance company.

He held this stock as temporary security for a small loan made to one of his employees. The officers of the insurance company knew the exact situation of it, and if any deficiency had happened in the assets of the company, it was David Myers from whom they should demand pay, and not Mr. Pullman.

The forcible argument used in the court below in the trial of these causes, and also in this court in other cases, was that any party holding himself out upon the books of the company, as a stockholder, thereby said to the insured: "We hold in our hands eighty per cent. of the "amount of stock standing in our names, as a trust fund "to secure you against any loss by virtue of your insur-

"ance policy." This argument [illegible]
no policy was ever issued after the [illegible]
and no liability was ever incurred [illegible]
Pullman's being a stockholder in this [illegible]

H. S. MON[illegible]
L. H. BISBEE,
Attys for Pet'r in Error.

IN THE

Supreme Court of the United

ALBERT B. PULLMAN,
PLAINTIFF IN ERROR,
vs.
CLARK W. UPTON, ASSIGNEE IN BANKRUPTCY OF THE GREAT WESTERN INSURANCE COMPANY,
DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR DEFENDANT IN ERROR.

L. H. BOUTELL,
OF COUNSEL FOR DEFENDANT IN ERROR.

CHICAGO:
BEACH, BARNARD & CO., LEGAL PRINTERS, 115 RANDOLPH STREET.
1878.

IN THE

Supreme Court of the United States.

ALBERT B. PULLMAN,
Plaintiff in Error,
vs.
CLARK W. UPTON, Assignee in Bankruptcy of The Great Western Insurance Company,
Defendant in Error.

In Error to the Circuit Court of the United States, for the Northern District of Illinois.

Brief for Defendant in Error.

Statement.

This is an action of assumpsit, brought by Clark W. Upton, as assignee in bankruptcy of the Great Western Insurance Company, against Albert B. Pullman, as a stockholder in said company, for the balance unpaid on his stock.

The charter of this company, dated February 4th, 1857, fixed its capital stock at $100,000. Under the general insurance law of Illinois, of March 11th, 1869, the company obtained the right, on June 25th, 1870, to increase its capital stock to $5,000,000. Under this amended charter, it carried on a fire insurance business in Chicago, Illinois, till

the great fire of October 8th and 9th, 1871. The losses sustained by reason of that fire, rendered the company insolvent, but it undertook to continue its business till January 17th, 1872, when a petition in bankruptcy was filed against it in the United States District Court for the Northern District of Illinois, on which petition it was adjudicated a bankrupt, February 6th, 1872. On the 11th day of April, 1872, said Upton was appointed assignee in bankruptcy of said company.

Claims to the amount of about $800,000 were proved against the estate of said company. The assets of the company consisted, for the most part, of unpaid balances on its capital stock, which, in most cases, were eighty per cent. On the 5th of July, 1872, on the representation of the assignee, the Bankruptcy Court made an order, that the amount unpaid on said capital stock should be paid to the assignee on or before August 15th, 1872, and in default thereof, that the assignee proceed to collect the same, and that notice of said order be given to the stockholders, by publication, or otherwise. Notice of this order was accordingly given to the stockholders, by publication, and by mailing to each stockholder a copy of the order, with a demand for payment.

The plaintiff in error, Albert B. Pullman, having failed to pay the amount due on his stock, after such demand, in accordance with the terms of said order, this suit was commenced in said District Court. Said Pullman filed the plea of general issue, and a jury being waived, and the case submitted to the court, the issues were found for the plaintiff in the original suit. The case was removed by said Pullman, by writ of error, to the Circuit Court of the United States for said district, where the judgment of the court below was affirmed. Whereupon, it was removed by writ of error to this court.

The only feature distinguishing this case from the cases of *Sanger* v. *Upton*, and *Webster* v. *Upton*, 1 Otto,

56 and 65, is this, that this stock was assigned to said Pullman as collateral security. The evidence showed that this stock, consisting of twenty-five shares, was originally owned by one David Myers, who had paid twenty per cent. upon it. That Myers, sometime in the summer of 1871, assigned this stock to said Pullman as collateral security for a loan of $18,900. That prior to the fire of October 9th, 1871, Pullman caused said shares of stock to be transferred on the books of said company to himself. That the president of the company knew that Pullman took and held said stock as collateral security. (Record, original page 43).

Points.

1. The liability of the original holders of the stock of this company has already been decided, in the following cases:

Sanger v. *Upton*, 1 Otto, 56.
Upton v. *Tribilcock*, 1 Otto, 45.

2. The liability of a transferee of the stock of this company has been decided in the case of

Webster v. *Upton*, 1 Otto, 65.

3. An assignee of stock, who holds it as collateral security, if he causes the stock to be transferred to himself on the books of the company, becomes liable to the company, and the creditors of the company, for unpaid balances thereon.

The Newry &c. R. W. Co. v. *Moss*, 14 Beavan, 64.
Adderly v. *Storm*, 6 Hill, 624.
Worrall v. *Judson*, 5 Barb., 210.
Hoare's case, 2 Johns. and Hem., 229.
Munn v. *Currie*, 2 Barb., 294.
Wheelock v. *Kost*, 77 Ill., 296.
1 Red. on R. W., § 40 (5 and 6), § 47.

L. H. BOUTELL,
Of Counsel for Defendant in Error.